

The Current Environment

Florida Chapter

October 1, 2009

ENGAGED DIRECTORS.
EFFECTIVE BOARDS.



The Current Environment



“In the face of uncertainty, when inaction is not an option, boards can find their way forward by asking themselves a simple, double-barreled question: When we look back one year from now will we be satisfied that we protected our companies against the risks inherent in the current situation and that we have taken advantage of what may be once in-a-lifetime-opportunities”

December 18, 2008

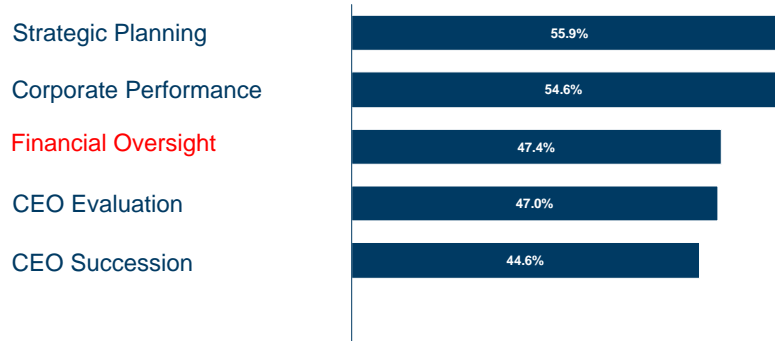
Pre-empting Future Shock: How Boards Can Address the Economic Crisis Now, by Theodore L. Dysart and Neil S. Novich

The Current Environment



Top Issues from the NACD Governance Survey...

- Risk oversight fell to 6th place but financial oversight jumped four places in 2009



3

The Current Environment



An Improving Market, An Uncertain Future

- Recovery looms, legislation also
 - Signs of an improving market
 - A cascade of legislation affecting corporate governance
 - Populist atmosphere in the Beltway
- Executive compensation under scrutiny

4

The Current Environment



Hitting Bottom?

- Have we hit the Great Recession's bottom?
- Job losses eased
- The Dow's amazing recovery
- Negative housing market trends may be moderating
 - Housing prices in the US climbed 5% in Q2

Recovery looms, but....

5

The Current Environment



A Cascade of Legislation and Regulation

- Shareholder Bill of Rights Act of 2009 (Schumer)
- Shareholder Empowerment Act (Peters)
- Compensation Fairness Act (Frank)
- Investor Protection Act (Treasury)
- Corporate Governance Reform Act (Ellison)
- Executive Pay Acts (McCaskill)
- Stock Option Deduction Act (Levin)
- Various regulations from the SEC

6

The Current Environment



	Proxy Access	Risk Committee	Say on Pay	Majority Vote	Independent Board chair	Mandatory CRO	Limits on Excessive Compensation	Independent Comp. Committee
Shareholder Bill of Rights	✓	✓	✓	✓	✓			
Compensation Fairness Act			✓					✓
Excessive Pay Act							✓	
Shareholder Empowerment Act	✓		✓	✓	✓			✓
Corporate Governance Reform Act		✓	✓		✓	✓		✓

7

The Current Environment



	Introduced by	Major Action	Expected Debate	Expected Passage
Shareholder Bill of Rights	Sen. Schumer		Q1 2010	Q1 2010?
Compensation Fairness Act	Rep. Frank	Passed House	Oct/Nov 2009	Q1 2010?
Excessive Pay Act	Sen. McCaskill			N/A
Shareholder Empowerment Act	Rep. Peters			N/A
Corporate Governance Reform Act	Rep. Ellison			N/A

The Current Environment



Possible Legislative Proposals

- Say-on-pay
- Proxy access
- New listing exchange requirements
 - Chair independence
 - Annual elections
 - Majority vote
 - Risk committees
- Use of independent comp. advisors
- Greater disclosure of compensation metrics and goals
- Restrictions on severance pay
- Independent comp. committees
- Restricts incentives for inappropriate risks
- Shareholder votes on golden parachutes

9

The Current Environment



Additional SEC Regulations and Proposals

- Current Regulations
 - Elimination of broker discretionary voting
- Proposals
 - Increased disclosure for the following:
 - Overall compensation policies and impact on risk taking
 - Stock and option awards for executives
 - Director and nominee qualifications
 - Company leadership structure
 - Board's role in the risk management process
 - Proxy access

10

The Current Environment



Still on the SEC agenda

- Increased regulation of market professionals and intermediaries
 - Register hedge fund advisers and hedge funds
 - Increased disclosure around asset-backed securities
 - Increase disclosure from credit rating agencies
 - Restrictions on money market funds
 - Increased information regarding municipal securities

11

The Current Environment



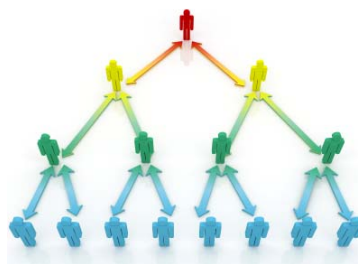
Global Issues

- Emerging markets, importance of BRICs (Brazil, Russia, India, China). Members of an expanded G-8?
- US adoption of International Financial Reporting Standards (IFRS)
 - Mandatory reporting under IFRS beginning in 2014
- Credit and liquidity issues
- G-20 actions

12

CEO Succession Planning

- CEO departures fell for the sixth month in August
- CEO departures are down 16% from 2008 levels
- 101 CEOs left in August; 30% lower than August 2008*



* Challenger, Gray & Christmas, August 12, 2009

13

Advance Recommendations from the 2009 BRC Report on Risk Governance

- Encourage management to pursue risk as a means to generate sustainable corporate value or performance
- Ensure that full boards have primary responsibility for risk
- Establish acceptable levels of volatility for each business unit
- Understand the aggregate impact of risk exposure
- Make sure the board culture encourages dynamic interaction

14

NACD Taking the Lead

- Directors, investors, and lawmakers are all focused on restoring confidence in Corporate America
- In 2008, NACD took the lead convening directors, the business community and investor groups to codify a set of principles to guide boards of directors
- The goal is to enable boards to make governance decisions in the context of their own corporate strategy

15

The Key Agreed Principles

- Intended to provide a blueprint to improve the quality of discussion and debate about governance issues moving forward
- The principles empower board leadership, particularly in the areas of:
 - Oversight of risk
 - Involvement in corporate strategy
 - Compensation
 - Transparency

16

The Current Environment



The Key Agreed Principles

- Describe areas of current consensus regarding governance of publicly traded US companies
- Recognize discussions continue regarding areas where consensus not yet developed
- Support flexibility & continued development of governance practices
- Reject “box-ticking”
- For use by board & shareholders in considering governance practices

17

The Current Environment



Principle I : Emphasizes that every board needs to design its own governance structure and practices

Principle II: Emphasizes the importance of transparency in explaining how those structures and practices have been tailored to meet the boards’ own needs

Principles III-X: Describe the key fundamentals boards should consider when designing and explaining its structures and practices, including:

- | | |
|---------------------------------------|--|
| 3. Competency & Commitment | 7. Information, Agenda & Strategy |
| 4. Accountability & Objectivity | 8. Protection Against Entrenchment |
| 5. Independent Board Leadership | 9. Shareholder Input in Director Selection |
| 6. Integrity, Ethics & Responsibility | 10. Shareholder Communications |

18



ENGAGED DIRECTORS. EFFECTIVE BOARDS.®

Thank You